



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1255**

**[Doc. No. AMS-SC-16-0112; PR-A1, PR-B]**

**Organic Research, Promotion, and Information Order;**

**Termination of Rulemaking Proceeding**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; termination of proceeding.

**SUMMARY:** This action terminates a rulemaking proceeding that proposed to establish a national research and promotion program for certified organic products under authority of the Commodity Promotion, Research and Information Act of 1996 (1996 Act). The program was proposed by the proponent group, the Organic Trade Association (OTA). Based on uncertain industry support for and outstanding substantive issues with the proposed program, USDA is terminating the proceeding.

**DATES:** This termination is made on May 15, 2018.

**ADDRESSES:** Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406-S, Stop 0244, Washington DC 20250-0244.

**FOR FURTHER INFORMATION CONTACT:** Heather Pichelman, Division Director, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, see **ADDRESSES**;

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**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding include: A proposed rule published in the **Federal Register** on January 18, 2017 (82 FR 5746), which provided a 60-day comment period that ended on March 20, 2017. On February 27, 2017, a document was published in the **Federal Register** that extended the comment period until April 19, 2017(82 FR 11854).

#### **Preliminary Statement**

The 1996 Act authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. Section 10004 of the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113-79) amended section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), which authorizes generic commodity promotion programs under the various commodity promotion laws, to allow for an organic commodity promotion order.

On May 15, 2015, USDA received a proposal for a national research and promotion program for certified organic products from OTA. OTA is a membership-based trade organization representing growers, processors, certifiers,

farmers associations, distributors, importers, exporters, consultants, retailers, and others involved in the organic sector.

OTA proposed a program that would be financed by an assessment on certified organic products and administered by a board of industry members selected by the Secretary of Agriculture. The purpose of the program would be to strengthen the position of certified organic products in the marketplace, support research to benefit the organic industry, and improve access to information and data across the organic sector.

A proposed rule consisting of OTA's proposal was published in the **Federal Register** on January 18, 2017 (82 FR 5746), which provided a 60-day comment period that ended on March 20, 2017. On February 27, 2017, a document was published in the **Federal Register** that extended the comment period until April 19, 2017(82 FR 11854). The proposed rule included a request for comments on substantive aspects of the proposed program, including the support for, and method of, assessing imports; the approach for calculating assessments including how "dual-covered commodities" would be handled; and the de minimis exemption level.

In response to the proposed rule, USDA received almost 15,000 comments. The comments revealed that there is a

split within the industry in terms of support for the proposed program. While some comments voiced support for a collective industry program, other comments stated that industry was not aligned in backing the proposal. Opponents raised concerns about the proposed program, including how the de minimis level would eliminate a majority of organic farmers from the program; the disproportionate impact on high value commodities as assessments would be tied to sales value; whether organic promotion is possible without being disparaging to other agricultural commodities; voting methodology; financial burden on small entities to comply; and cited the challenges to tracing imported organic products. Both those in support of, and those in opposition to the proposed program requested changes to the method of assessment for imports and a reduction in the paperwork burden on covered entities. Other outstanding significant issues with the proposal are the assessment of non-food products and products "made with (specified ingredients)".

Research and promotion programs are brought about by collective and united industry action. The comments received on the proposed organic program disclosed divergent views within the organic industry. Based on uncertain industry support for and unresolved issues with

the proposed program, USDA is terminating the proceeding. This action also terminates the rulemaking procedure on the proposed referendum procedures (82 FR 5438).

Termination of this rulemaking proceeding will remove ex parte communication prohibitions and allow USDA to engage fully with all interested parties to discuss and consider the evolving needs of the industry going forward. Based on the above, USDA is terminating this rulemaking proceeding.

#### **Regulatory Flexibility Act and Paperwork Reduction Act**

As part of the proceeding conducted for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601-612) and the Paperwork Reduction Act of 1955 (44 U.S.C. Chapter 35) were considered. Because this action terminates the underlying rulemaking proceeding, the economic conditions of small entities are not changed as a result of this action, nor have any compliance requirements changed. Also, this action does not provide for any new or changed reporting and recordkeeping requirements. Accordingly, all supporting forms for the proposed program will be withdrawn.

#### **Termination of Proceeding**

In view of the foregoing, it is hereby determined that the rulemaking proceeding proposing to establish a national

research and promotion program for certified organic products should be and is hereby terminated.

**List of Subjects in 7 CFR Part 1255**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Organic, Promotion, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

Dated: May 8, 2018

Bruce Summers  
Acting Administrator  
Agricultural Marketing Service

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